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09/492,398	01/27/2000	Al J. Mooney		9822

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EXAMINER

RIMELL, SAMUEL G

ART UNIT PAPER NUMBER

2175

17

DATE MAILED: 02/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/492,398

Applicant(s)

MOONEY, AL J.

Examiner

Sam Rimell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 50-67 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 50-67 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


SAM RIMELL
PRIMARY EXAMINER

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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Response to Restriction Requirement: In response to Examiner's requirement for restriction dated October 28, 2003, applicant has elected group I, claims 50-67 with traverse. Applicant's arguments submitted in traverse have been considered. In particular, applicant argues that the requirement is not understood, and the rationale in support thereof is not understood. In making the requirement for restriction, Examiner maintains that claims 50-67 and claims 68-71 represent patentably distinct species in invention. This is supported by the fact that claim 50 sets forth the steps of conducting a medical examination and prescribing a medical supply. Claim 68 contains no such steps, and is instead addressed to an invention for ordering and delivering a medical supply. Given these clear distinctions, the invention defined by claims 50-67 and the invention defined by claims 68-71 are found to be patentably distinct species. The restriction requirement is therefore sustained and made final. Claims 50-67 will be examined on the merits.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 50-67 are rejected under 35 U.S.C. 102(e) as being anticipated by Silver (U.S. Patent 6,269,339).

Claim 50: Silver discloses a physician's website (FIG. 1) in which a patient is presented with a questionnaire (FIGS. 4-6). The questionnaire is considered to be medical examination. The medical examination is considered to be conducted by the medical care provider since the

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questionnaire is provided by the medical care provider (Dr. Roizen—FIG. 2). As seen in FIG. 19, the result of the examination is that the patient is prescribed very specific medical products, such as specific vitamins. The screen shots shown in FIGS. 18-19 are also websites which the patient can access and which contains the array of medical products which are prescribed for the patient. The patient can order a medical supply by clicking on one of the “Products” boxes shown in FIGS. 18-19 and be led to a website for a vendor that distributes that product (col. 18, lines 26-45). The patient then orders the supply from that vendor. The medical care provider which prescribes the supply may also receive a fee for endorsing the products which are recommended to the patient (col. 19, line 1-7).

Claim 51: Col. 18, lines 26-45 refer to product merchants who are vendors of medical supplies that receive orders that are placed with the assistance of the physician’s website.

Claim 52: FIG. 19 illustrates vitamins as being the medical supply being distributed. Individual vitamins or packages of vitamins are considered readable as devices for medical purposes.

Claim 53: The vitamins illustrated in FIG. 19 are considered to be pharmaceutical products.

Claim 54: The physician may also be considered as a vendor of supplies since the physician cooperates with the vendor by endorsing the supplies which are presented to the patient (col. 19 ,lines 1-7).

Claim 55: The e-commerce provider is the physician and the website associated with the physician (FIG. 2 is the first page of this website). Payment of the product vendor is facilitated

through this website since the patient cannot reach the product vendor unless directed to the vendor by the website.

Claim 56: The e-commerce provider is the physician and the website associated with the physician. Since the physician receives payments for product endorsements (col. 19, lines 1-7), the physician will inherently receive money into a physician's account (such as the physician's bank account) from an account associated with the supply vendor (such as the merchant's bank account). Normal transactions on such accounts include debits and credits.

Claim 57: The e-commerce provider is the physician and the physician's associated website.

Claim 58: See remarks for claim 56.

Claim 59: The e-commerce provider is the physician and the website associated with the physician. Since the physician cooperates with the supply vendor by endorsing medical supplies, the physician may also be considered a vendor of supplies.

Claim 60: See remarks for claim 56.

Claim 61: See the description of the physician in FIG. 2.

Claim 62: See remarks for claim 50.

Claim 63: See remarks for claim 55.

Claim 64: See remarks for claim 56.

Claim 65: See remarks for claim 57.

Claim 66: See description of physician in FIG. 2.

Claim 67: The physician's website is a website on the Internet (col. 8, line 16).

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Remarks

Applicant's arguments have been considered.

The rejections under 35 USC 101 are vacated in light of applicant's arguments and amendments.

The application of the Silver reference as applied under 35 USC 102 is however, maintained with respect to the presently examined claim set of claims 50-67.

Applicant argues that in the Silver system, the medical care provider does not conduct a medical care examination and does not derive any fees after the examination is performed. Examiner maintains that the medical care examination is the questionnaire provided to the patient. The examination is considered to be conducted by the physician in the sense that it is provided by the physician. In addition, the reference to Silver does teach the receipt of payments by the physician in association with providing endorsements of specific products (col. 19, lines 1-7).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Sam Rimell at telephone number (703) 306-5626.

A handwritten signature in black ink, appearing to read 'S. Rimell', with a stylized flourish at the end.

Sam Rimell
Primary Examiner
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